

REMARKS

This submission is made in response to the Non-Final Office Action dated August 9, 2007. Claims 1, 3, 4, 6-15, 17, 18, and 20-28 are currently pending for examination, of which claims 1, 15 and 28 are independent; the remaining claims are dependent claims. In response Applicant has filed herewith an Amendment amending independent claims 1, 15, and 28.

Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Applicant and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Examiner is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the foregoing amendments and following remarks.

Rejection of claims under 35 U.S.C. § 112:

Claims 1, 3, 4, 6-15, 17, 18, and 20-28 stand rejected under 35 U.S.C. § 112, paragraph 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation in Claim 1, lines 12-13 “the attributed credit value” refers to a positive credit value or a negative credit value, and the limitation “the received media content” refers to credit-bearing or debit-bearing content as recited in the previous limitation of Claim 1 (i.e., lines 9-11). The applicant respectfully submits that this is not indefinite as the Examiner asserts but is clear as presented in the previous amendment.

Similarly, the limitation in claim 15 and claim 28 which recite “the attributed credit value” refer to a positive credit value or a negative credit value depending on whether the content is construed as credit-bearing or debit-bearing. The applicant respectfully submits that this is not indefinite as the Examiner asserts but was clear as presented in the previous amendment.

Rejection of claims under 35 U.S.C. § 103(a) over Neel in view of Russo:

Claims 1, 3, 4, 6-15, 17, 18, and 20-28 stand rejected as being unpatentable over U.S. Patent 5,838,314, Neel et al. (hereinafter Neel) in view of U.S. Patent 5,619,247, Russo (hereinafter Russo) under 35 U.S.C. § 103(a). Applicants respectfully request reconsideration and withdrawal of these rejections.

Applicants respectfully submit that in order to establish a *prima facie* case of obviousness three criteria must be met. First, there must be some suggestion or motivation to modify a reference or combine reference teachings, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, the modification or combination must have some reasonable expectation of success. Third, the prior reference or combined references must teach or suggest all the claim limitations. MPEP § 2143. The teachings of a prior art reference must be

considered **as a whole** including those portions that would lead away from the claimed invention. MPEP § 2141.02(VI).

The previously submitted remarks regarding Neel remain applicable, and are incorporated herein for the sake of brevity. Applicants respectfully submit that neither Neel nor Russo teach the subject matter of claims 1, 15 and 28, as amended. As previously asserted, the combination of the above references does not teach or suggest all of the claim limitations. Moreover the newly amended claims make it clear that the references do not teach all of the claim limitations. Therefore, at least for this reason, Neel either alone or in any combination with the other art of record does not teach all of the limitations of the independent claims. Applicants respectfully request reconsideration and withdrawal of these rejections.

With regards to claim 1 the Examiner states the following:

Neel discloses that the value of the advertisements is also adjusted. The system can adjust the attributed value...based on the cost factor data (e.g. the value of the program the advertisement is associated with) and one additional predetermined criterion (e.g. how many times the advertisers will pay for a program for each user) (See [Neel] col. 5 lines 62-67, col. 13 lines 34-60, and col.14 lines 58-62).

Office Action, p. 4. The language of claim 1, as previously submitted, was not taught by Neel. As best understood Neel only teaches watching the advertisement permits viewing other content. Neel does not teach adjusting the attributed value of the media content; rather Neel merely indicates that watching an advertisement allows one to view the other content. The price of the pay-per-view content in the system of Neel undergoes no adjustment, but should the user elect to view the commercial the price is waived and

billed to the advertiser (i.e., "Little Women" still costs \$4.95 but that money is paid by the advertiser rather than the user) (Neel, Fig. 7a, col. 4 lines 51-56). This stands in contrast to the present invention wherein the attributed value is adjusted by another predetermined criteria that is not an advertisement.

In order to expedite prosecution; Claim 1 has been amended to recite, *inter alia*,

is adapted to adjust the attributed credit value of the received media content based on said cost factor data and at least one additional predetermined criterion, *wherein the at least one additional predetermined criterion is not the received media bearing a negative credit value*

Claim 1 (emphasis added). The other independent claims 15 and 28 have been amended to include similar language. This amended claim language is intended to clearly indicate that another criterion other than viewing the advertising is used to adjust the attribute value of the received media content. In the specification it is clear that another predetermined criteria, other than advertising, may be utilized by the cost adjuster to adjust the value of the media content. (Specification, p. 7, lines 14-15). For example, the debit value of a movie may be highest when it is first released, and then decline with the passage of time (*Id.*).

Furthermore, in order to expedite prosecution Claim 1 has been amended to recite, *inter alia*,

wherein said controller uses the balance in the account to determine the rules for future behavior of content presentation; and

Claim1. This language is intended to clarify the use of the account balance in determining rules for content presentation. As originally stated,

[A]s recited in the specification, the present invention broadly contemplates a method whereby a computer maintains an "account" of the

positive- and negative-value content that has been presented to the consumer, and *uses the balance in that account to determine the rules for future behavior of the presentation device.* (Page 3, lines 12-15)

in Amendment of April 2005, p. 10 (emphasis added). And also as pointed out by the examiner,

[A]pplicant states that the present invention maintains an “account” of the positive and negative value content that has been presented to the consumer, and *uses the balance in that account to determine the rules for future behavior of the presentation device.* [...] However, such features disclosed on page 3 lines 12-15 [...] of the specification are not recited in claims 1 and 15.

in Office Action of June 2005, p. 10 (emphasis added). This language has been added solely for the reason of expediting prosecution and are not in acquiescence of the Office’s position on allowability of the claims.

Moreover, as previously asserted, there is no reasonable expectation of success for combination of Neel and Russo. The Examiner asserts that because the interactive video distribution art is a predictable art based on common components and methods that are easily integrated into various types of systems there is a reasonable expectation of success for combination of Neel and Russo. Applicants respectfully submit that the rationale of predictability is incorrect and the Examiner fails to provide support for this rationale. The present invention contemplates more than a common interactive video distribution system and applicants respectfully submit that this is reflected in the previous claim language and also in the amendments contained herein.

Contrary to the assertion of the examiner, there is no suggestion or motivation to combine Neel and Russo. The examiner asserts that,

Russo discloses pay-per-play system that is within the same art as Neel. Russo discloses many features, for example, maintaining a credit balance

and apply [sic] rules based on the credit balance (See [Russo] col. 6 lines 9-33 and col.10 lines 23-48), that would provide more convenience for the consumer when the consumer wishes to view the media content (See [Russo] col. 2 lines 66 - col. 3 line 11)

Office Action of August 2007, p. 9. The Examiner fails to provide adequate support as cited for the rationale of convenience for the consumer being an implicit motivation to combine. Applicants have previously summarized the differences between the referenced art and the claimed invention and those remarks are incorporated herein as equally applicable. Not only is there no implicit motivation to combine Russo and Neel, but combination does not produce the claimed invention. This rationale for rejection is therefore improper.

For the foregoing reasons, Applicants respectfully submit that claims 1, 15, and 28 are allowable over Neel and Russo. Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 15, and 28 as being unpatentable over Neel in view of Russo under 35 U.S.C. § 103(a).

With regards to the rejection of claims 3, 4, 6-12, 17, 18, and 20-25, these claims are dependent upon independent claims 1 and 15. Applicants respectfully submit that these claims are allowable over Neel and Russo for at least the same reasons as discussed above with regards to claims 1 and 15. Applicants respectfully request that the Examiner withdraw the rejection of claims 3, 4, 6-12, 17, 18, and 20-25 as being unpatentable over Neel and Russo under § 103(a).

**Rejection of claims under 35 U.S.C. § 103(a)
over Neel in view of Russo, and further in view of Hunter:**

Claims 13, 14, 26, and 27 stand rejected as being unpatentable over Neel in view of Russo, and further in view of U.S. published application 2003/0133692 of Hunter (hereinafter Hunter) under 35 U.S.C. § 103(a).

With regards to claims 13, 14, 26, and 27, these claims are dependent upon independent claims 1 and 15. Applicants respectfully submit that claims 1 and 15 are allowable over Neel and Russo as established above. Claims 13, 14, 26 and 27 are also allowable, then, for at least the same reasons as claims 1 and 15. Applicants respectfully request that the Examiner withdraw the rejection of claims 13, 14, 26 and 27 as being unpatentable over Neel in view of Russo, and further in view of Hunter under 35 U.S.C. § 103(a).

Applicants would like to respectfully point out that the teachings of Hunter are not sufficient to overcome the above discussed deficiencies in the teachings of Neel and Russo with respect to the subject matter of the independent claims, as amended.

Request for telephone interview:

If there are any further issues in this application, the Examiner is requested to contact the undersigned at the telephone number listed below to conduct a telephone interview prior to the issuance of a further Office Action. Applicants respectfully submit that this is a particularly appropriate request in light of the prosecution history of the instant application, in which several amendments have been submitted along with several

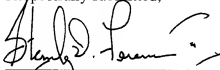
Requests for Continued Examination and prosecution being reopened after a Pre-Appeal Brief Conference.

Conclusion:

In view of the foregoing, it is respectfully submitted that independent claims 1, 15, and 28 fully distinguish over the applied art and are thus in condition for allowance. By virtue of dependence from claims 1 and 15, and in their own right, it is also submitted that claims 3, 4, 6-14, 17, 18, and 20-27 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including claims 1, 3, 4, 6-15, 17, 18, and 20-28, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Stanley D. Ference III
Registration No. 33,879

Customer No. 35195
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants